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Atty. Dkt. No. 084561-0103

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mark LANDESMANN
Title: BUYER-DRIVEN TARGETING OF
PURCHASING ENTITIES
Appl. No.: 09/758,239
Filing Date: January 12, 2001
Examiner: Unassigned
Art Unit: 2162

**PETITION UNDER 37 C.F.R. § 1.137(b) FOR REVIVAL OF
APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY**

Commissioner for Patents
Box DAC
Washington, D.C. 20231

Attn: OFFICE OF PETITIONS

Sir:

After submitting a nonpublication request with the above-referenced application upon filing, the application became abandoned under operation of law for failure of Applicant to timely and properly notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing. Accordingly, this petition is being filed as a protective measure to ensure that any patent that may issue from the above-referenced application will not be invalid and/or unenforceable due to Applicant's failure to file the appropriate notice.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Required reply and/or fee;
 - (2) Petition fee (37 C.F.R. § 1.17(m));
 - (3) Statement that the abandonment was unintentional; and
 - (4) Any required terminal disclaimer (37 C.F.R. § 1.137(c)).
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- (1) Required reply and/or fee.

The proposed reply for the above-referenced notification in the form of a Request to Rescind Previous Nonpublication Request 35 U.S.C. 122(b)(2)(B) is enclosed herewith.

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(2) Petition fee (37 C.F.R. § 1.17(m))

A check in the amount of \$1,300.00 is enclosed for the amount stated in 37 C.F.R. § 1.17(m) to cover the fee for this petition.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

(3) Statement that the abandonment was unintentional.

Applicant hereby states that the entire delay in filing the required reply, from the due date for the reply until the filing of this petition, was unintentional and was done without deceptive intent. Applicant believed in good faith that it was following the applicable and appropriate procedures and practices of the Office. The Office has since (recently) promulgated a "Reminder" that is inconsistent with the prior accepted practices. As a result, the present application is at least theoretically abandoned even though no notice of abandonment has been received from the Office. Applicant files this petition in an overabundance of caution in order to clarify the situation.

Specifically, on May 14, 2001, Applicant's counsel had filed a request to rescind the previous nonpublication request. This request to rescind was filed within forty-five (45) days of filing an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing.

At that time, Applicant's counsel believed that the request to rescind nonpublication provided the appropriate notice of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing. Counsel had based the wording of the request on the original form PTO/SB/36 (available until April 2001 but approved for use through October 31, 2002), which counsel believed was sufficient to satisfy the provisions of both 35 U.S.C. § 122(b)(2)(B)(ii) and 35 U.S.C. § 122(b)(2)(B)(iii).

However, just recently, the Office has promulgated the "Reminder that Rescission of a Nonpublication Request is Not Itself a Notice of Foreign Filing" (dated April 11, 2003). This Reminder was published on the website of the Office. Applicant's counsel reviewed this reminder and only then discovered that the request filed on May 14, 2001 did not provide the appropriate notice, according to the Reminder. The form did ask for rescission of the nonpublication request but did not inform the Office of foreign filing. In other words, Applicant's counsel's reliance on PTO/SB/36 may not have been sufficient to meet the requirements of both 35 U.S.C. § 122(b)(2)(B)(ii) and 35 U.S.C. § 122(b)(2)(B)(iii). Although Applicant's counsel's practices have now changed, according to the Reminder, the request to rescind that was filed in this application was not sufficient. Applicant's counsel's reliance on PTO/SB/36 was done in good faith and clearly without deceptive intent.

Accordingly, Applicant wishes to revive the above-referenced application in light of counsel's unintentional failure to file the appropriate notice of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing.

(4) Any required terminal disclaimer (37 C.F.R. § 1.137(c)).

No terminal disclaimer is required in this application under 37 C.F.R. § 1.137(c) since this application was not filed before June 8, 1995.

Respectfully submitted,

Date April 29, 2003

By 

FOLEY & LARDNER
Customer Number: 22428



22428

PATENT TRADEMARK OFFICE

Telephone: (202) 672-5485

Facsimile: (202) 672-5399

William T. Ellis
Attorney for Applicant
Registration No. 26,874

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.